

**PATENT APPLICATION**  
**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of

JOHNSON, ERIC A.

Appln. No.: 08/458,019

Filed: 1 June 1995



Group Art Unit: 1651

Examiner: H. Lilling

GROUP 100  
SECTION - 2 AM C: 00

For: PROCESSES FOR IN VIVO PRODUCTION OF ASTAXANTHIN AND PHAFFIA  
RHODOZYMA YEAST OF ENHANCED ASTAXANTHIN CONTENT

**REQUEST FOR RECONSIDERATION**

**BOX NON-FEE AMENDMENT**

Assistant Commissioner for Patents  
Washington, D.C. 20231

*#27*  
*Silber*  
*11-5-98*

Sir:

This Amendment is responsive to the Office Action mailed 29 July 1998. The Examiner set a three-month period for response making the due date for response 29 October 1998.

**REMARKS**

In paragraph 19 on pages 2 and 3 of the Office Action, the double patenting rejection was maintained. The Examiner stated on page 3 that the presented arguments were not persuasive since the filing date is not an issue in a double patenting rejection of the obviousness type.

The rejection is traversed for the following reasons.

The law holds that in certain circumstances the filing date can be relevant, for example, if through no fault of the Applicant, prosecution is delayed in an application which actually was filed prior to an issued patent relied on for the rejection.